

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* BLAKELY, Minors.

UNPUBLISHED  
October 20, 2016

No. 331626  
Macomb Circuit Court  
Family Division  
LC No. 2013-000411-NA

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Before: GADOLA, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

On February 10, 2016, the trial court terminated respondent-mother's parental rights to the minor children JB and EB pursuant to MCL 712a.19b(3)(c) (i), (ii), (g) and (j). Respondent appeals the order by right. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

On November 8, 2013, petitioner Department of Health and Human Services (DHHS), petitioned for the court to take jurisdiction over JB (d/o/b 6/15/2012). DHHS alleged that respondent parents left their four other children with a maternal aunt. On November 8, 2013, the trial court held a hearing wherein DHHS presented evidence that respondent abandoned her four other children with the aunt. In addition, evidence showed that respondent did not cooperate with the aunt to allow her to provide medical care, they had a history of unstable housing including housing with no running hot water and no furniture, respondent did not enroll the children in school, and provided false information regarding the whereabouts of JB. The court authorized the petition and JB was placed in the care of his maternal aunt.

On December 12, 2013, both parents pleaded no contest to the petition and DHHS developed a parent agency agreement (PAA). Thereafter, respondent father had nothing to do with the children and refused to cooperate with DHHS. The court ultimately terminated respondent father's parental rights and respondent father is not a party to this appeal.

Shortly after the petition concerning JB, respondent gave birth to another child, EB (d/o/b 1/18/2014). DHHS filed an amended petition to add EB to the proceedings. Respondent-mother (respondent) pleaded no-contest and the court took jurisdiction over EB, and EB was placed in foster care. The same terms of the PAA were adopted with respect to EB.

Thereafter, the trial court held several status review hearings. At a March 11, 2014, hearing, the caseworker indicated that referrals were made for employment services, housing, parenting classes and individual therapy. Respondent had not started any of the services.

On June 5, 2014, respondent mother indicated that she had started parenting classes and had completed a psychological evaluation with Dr. Patrick Ryan. According to the court's summary of Dr. Ryan's report, Dr. Ryan indicated that respondent's "protocol was problematic and that she was an at-risk parent for child abuse due to major depression." Dr. Ryan also reported that respondent had mild difficulties with the children's basic developmental needs, milestones, and capacities. In addition, respondent "had no empathy whatsoever," she overvalued corporal punishment, and had difficulty setting limits. Dr. Ryan concluded that respondent presented as someone who would have difficulty raising children and her abuse potential was "over the cutoff." Dr. Ryan noted that respondent struggled with the prospect of raising two children "and suffers from a moderate degree of mental illness." Dr. Ryan reported that respondent had several issues with personality characteristics and he recommended intensive parenting classes, in-home services if the children were returned to respondent, and mental health intervention. Following the psychological evaluation, respondent began participating in individual therapy and was consistently participating in parenting time visits and had a one-bedroom apartment that was not large enough for two children.

On August 27, 2014, the trial court held another status review hearing. The caseworker indicated that the children were doing well in their placements. Respondent mother needed in-home and regular parenting classes and counseling for low self-esteem and depression. Respondent-mother had supervised parenting time at her apartment and she appeared to be "a little aloof" and "overwhelmed" while caring for the children. In addition, the caseworker indicated the respondent-mother needed to complete a money management course and submit a drug test. Respondent-mother was also arrested on July 21, 2014, for disorderly conduct.

At a November 5, 2014, hearing, the caseworker indicated that respondent completed drug screening, which was negative, and she completed a money management course. However, respondent's family had concerns with unsupervised parenting time because of her mental health and emotional issues. Although respondent attended individual therapy sessions, and a letter indicated that she was "making progress," it was not clear what progress respondent was making. In addition, respondent's apartment was not set up for children and respondent was looking for alternate housing. Respondent had two issues with the law. She falsely informed DHHS that she had two children living with her to obtain an additional \$158 in aid. DHHS was investigating the fraud. In addition, respondent received a disturbing the peace conviction for a July 21, 2014, disorderly conduct incident.

At the same hearing, the maternal aunt testified that she was present during the times that respondent had parenting time with the children. The maternal aunt stated that respondent would get involved with other things during parenting time, that guests would stop by respondent's home during visitation, and that during the last three visits, respondent's apartment was "extremely smoky." Respondent appeared tired, overwhelmed and in pain from recent surgery on one occasion. The court ordered continued supervised visits and directed respondent to focus on parenting during the visitations.

At a December 18, 2014 review hearing, respondent did not appear and she did not respond to her attorney. Parenting time was sporadic as respondent only made two of the six parental visits and a social worker tried to go to respondent's home to give her bus tickets and discuss treatment plans and visitation; however, respondent informed the caseworker over the telephone that she could not come to the door. The caseworker observed two parenting-time visits, which were at DHHS offices. The caseworker stated that respondent was not able to handle having two children and she would have major safety concerns if the children were returned to respondent. The caseworker had to interfere a lot during the visits. The caseworker stated that the parenting classes did not appear to have helped respondent and a psychological evaluation indicated that respondent was a prime risk for child abuse. In addition, respondent stopped attending individual therapy. Otherwise, respondent complied with the drug screening portion of the PAA and there were no problems with substance abuse. Respondent remained under investigation for DHHS fraud and had a deferred sentence for disorderly conduct.

On March 12, 2015, the court held another review hearing. At the hearing, the caseworker indicated that respondent attended only 3 of 16 parenting time sessions and the inconsistency with the parenting time visits was harming the parent-child bond. Respondent-mother was not compliant with the PAA regarding taking steps toward rebuilding her relationship with the children and she had not resumed individual therapy. The trial court continued the permanency planning and requested an additional psychological evaluation and parenting assessment.

The court held another review hearing on June 11, 2015. The caseworker submitted a psychological evaluation from Dr. Ryan. The court reviewed the evaluation and indicated that Dr. Ryan "noted little if any improvement" with respect to respondent's parenting skills and maintained that respondent-mother "simply does not have a good grasp of the basic elements of parenting at a conceptual level." Dr. Ryan noted that respondent improved somewhat with respect to her abuse potential, yet she continued to "have an elevated abuse potential." Dr. Ryan indicated that respondent presented as "overwhelmed with the prospect of raising children." Additionally, the children had multiple "difficulties" and respondent-mother was having trouble parenting the children and she had depression and anxiety, which had improved, but still persisted.

The caseworker indicated that respondent completed parenting classes, but did not appear to benefit from the classes and still struggled with caring for two children. Respondent had parenting time for three hours a week and struggled to care for the children and was still inconsistent with appearing for visitation. Respondent completed 8 of 13 parenting time visits and the caseworker did not recommend increasing respondent's parenting time and indicated that respondent did not have the ability to parent the children long-term. Furthermore, the children did not appear to have an attachment with respondent. Respondent had not resumed her individual therapy sessions, which was the second time that respondent failed to complete her therapy. The trial court continued the permanency planning and ordered respondent to attend every parenting time visit.

At a September 3, 2015, review hearing, the caseworker indicated that respondent completed only about half of her individual therapy sessions, but attended 10 of 12 parenting time sessions. In addition, respondent was participating in supportive visitation with a parenting

coordinator. However, respondent continued to struggle parenting both children. A DHHS representative indicated that respondent refused the agency's assistance in setting up a psychiatric evaluation because she wanted to select her own psychiatrist. The caseworker indicated that mental health, housing, and parenting skills remained barriers to reunification.

On November 13, 2015, the court held another review hearing. The caseworker indicated that respondent underwent a psychiatric evaluation. The psychiatrist indicated that respondent had mood disorder and anxiety and she was prescribed medication and scheduled for a follow-up appointment. However, respondent missed the follow-up appointment. Respondent was attending individual therapy for mental health, but respondent only made half of the scheduled sessions. Respondent only attended 4 out of 10 parenting time sessions and she was 30-45 minutes late to the sessions she did attend. The caseworker indicated that the children did not appear to be bonding with respondent. Respondent participated in a supportive visitation program and she scored low regarding her risk of understanding family rules and her ability to parent. The parenting coach offered testimony and indicated that respondent made 9 out of 12 scheduled visits and she improved her parenting skills. However, respondent could use more support.

The caseworker requested that the court authorize a petition to terminate respondent's parental rights. The caseworker indicated that respondent was still inconsistent with her parenting time and her individual therapy. Respondent repeatedly missed parenting-time sessions, appeared late to the sessions she did attend and the children did not appear to have a bond with mother and they needed permanency. The court approved the petition.

On November 15, 2015, DHHS filed a supplemental petition to terminate respondent's parental rights. On January 12, 2016, a referee held a termination hearing. At the hearing, caseworker Karen Crapo testified regarding EB, and Floyd Anderson testified regarding JB. Crapo testified that respondent failed to successfully complete her PAA. Respondent completed psychological evaluations, parenting classes and some individual therapy during the duration of the proceedings. Crapo testified that respondent did not benefit from these services. Respondent was unable to manage the children and she was not consistent with her visitations, missing many of the scheduled visitations. Specifically, respondent had not visited with the children in a month and out of the 63 parenting visits offered in 2015, respondent only attended 28 of the visits. When respondent did appear for the visits, she needed constant redirection. Crapo explained that the children's bond and attachment with respondent was "non-existent." In addition, respondent was not consistent with her individual therapy, she was not compliant with her anxiety medication, and she failed to follow up with a mental health professional after her initial appointment in September 2015.

Crapo testified that EB was doing excellent in foster care, that she was bonded with her foster parents, and was meeting her developmental milestones. EB's foster parents planned to adopt EB if possible. Crapo testified that it was in EB's best interests to terminate respondent's parental rights given the length of time that EB was a ward of the court, and given respondent's consistent lack of compliance with the PAA. Adoption was more of a permanent and suitable goal. Similarly, Anderson testified that JB's needs were being met with his maternal aunt, he was doing well in preschool, and the aunt wanted to adopt JB. Anderson testified that it was in

JB's best interests to terminate respondent's parental rights because he needed to remain in the only home that he had known.

Following the termination hearing, the referee entered an opinion on the record finding clear and convincing evidence to terminate respondent's parental rights. The referee found that respondent failed to achieve the required outcomes of the PAA such that the conditions that led to the adjudication continued to exist and there was no reasonable likelihood that they would be rectified within a reasonable amount of time. The referee noted that although respondent benefited somewhat from the services that were offered, she did not benefit from services with respect to her mental health issues, her parenting skills or her housing situation. Specifically, respondent's parenting visits were sporadic. Of the visits that she missed, about half of the missed visits she had called to indicate that she would be present, only to fail to appear at DHHS offices where the children were waiting. Further, Crapo testified that respondent lacked understanding to provide age-appropriate care to two children and the visitation program was of little benefit to respondent.

The referee also noted that respondent failed to comply with the PAA's requirement that she complete a psychological evaluation and abide by all of the psychologist's recommendations. Dr. Ryan indicated that respondent was not prepared for parenting and presented a risk for child abuse. Dr. Ryan recommended individual therapy, yet respondent repeatedly missed therapy sessions, failed to take her prescribed medication, and missed appointments with the psychologist and psychiatrist. Finally, the referee found that respondent did not demonstrate that she obtained suitable housing for the children as her current one-bedroom apartment was not large enough for two children.

Overall, the referee found that, although respondent benefitted from some services, she was unable to properly address her mental health issues, she did not overcome her issues with parenting skills, and she did not secure adequate housing for the children. Thus, the referee found that there was clear and convincing evidence to terminate respondent's parental rights under MCL 712.19b(3)(c)(i)-(ii), (g) and (j). The referee also found that there was clear and convincing evidence that termination was in the best interests of JB and EB. The referee noted that it was clear that respondent loved her children, yet she had been unable to provide the proper care for the children and she had not been able to overcome her mental health issues and had not shown necessary parenting skills to keep the children safe and content.

The court entered a formal order terminating respondent's parental rights on February 16, 2016. This appeal ensued.

## II. STANDARD OF REVIEW

We review a trial court's decision to terminate parental rights for clear error." *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

## III. ANALYSIS

Respondent argues that the trial court erred in terminating her parental rights because the court erred in failing to provide respondent “sufficient time to complete the parent agency agreement.” This argument lacks merit.

In this case, DHHS submitted the initial petition concerning JB on November 8, 2013, and amended the petition to add EB on March 11, 2014, when EB was born. The court entered the parental agency agreement (PAA) on December 12, 2013. The court ultimately terminated respondent’s parental rights on February 16, 2016. This was well after the 180-days that is required for termination under MCL 712a.19b. Thus, with respect to JB, respondent had over two years to complete the PAA and she had nearly two years to complete the agreement with respect to EB. Despite having nearly 24 months with respect to both of the children, respondent was not able to complete the agency plan as evidence showed that she could not overcome her mental health issues, she failed to benefit from parenting classes and did not develop suitable parenting skills. Respondent benefitted from services, but even after months of services, respondent continued to sporadically miss parenting time appointments, missed individual therapy sessions, and was not compliant with her medication plan and follow-up appointments with her mental health professionals. Nothing in the record supports that respondent would have completed the PAA had the court given her additional time. Moreover, the children needed permanency, having both been wards of the court for nearly two years. In short, the court did not clearly err in failing to grant respondent additional time to complete the PAA.

Respondent cites *In Re Boursaw*, 239 Mich App 161; 607 NW2d 408 (1999), in support of her argument that the court’s termination was premature. In that case, this Court held that the trial court’s termination order was premature where the trial court terminated the respondent’s parental rights after only eight months and where the respondent had “made significant strides in meeting each criterion set down by the court.” *Id.* at 173-174. In addition, the respondent consistently participated in parenting time, displayed proper parenting techniques, had a bond with the child and attended therapy sessions. *Id.*

In contrast, in this case, respondent had nearly 24 months to comply with the criteria set forth in the PAA, yet she struggled to make significant strides toward completing the goals set forth in the PAA. Respondent was inconsistent with her parenting time visits, inconsistent with attending her therapy sessions, failed to follow-up with her mental health professionals, and stopped taking her prescribed medication. Respondent also consistently displayed difficulties with parenting techniques and the caseworker testified that she did not benefit from parenting classes. The caseworker also testified that the children did not appear bonded to respondent. In short, unlike in *In Re Boursaw*, here, the trial court did not prematurely terminate respondent’s parental rights.

Next, respondent argues that the trial court clearly erred when it did not require DHHS to provide additional assistance in completing the PAA.

“Generally, when a child is removed from the parents’ custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan.” *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009). “Reasonable efforts to reunify the child and family must be made in *all* cases except those involving aggravated circumstances. . . .” *Id.* (internal quotation marks omitted, emphasis in original). These efforts

must also include “accommodations for those individuals with disabilities. . . .” *In re Terry*, 240 Mich App 14, 25; 610 NW2d 563 (2000). The issue of whether reasonable services were offered to a respondent ultimately relates to the issue of sufficiency of the evidence for termination of parental rights. *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

In this case, DHHS made reasonable efforts to reunify respondent and her children. Specifically, respondent argues that DHHS’ efforts with respect to her mental health issues were insufficient. However, DHHS made reasonable efforts to assist respondent overcome her mental health issues. DHHS arranged two psychological evaluations with Dr. Ryan, and referred respondent to individual therapy. In addition, contrary to respondent’s argument, when respondent needed to undergo a psychiatric evaluation, DHHS offered to refer respondent to a psychiatrist; however, respondent declined the referral and insisted that she would locate her own psychiatrist, which ultimately delayed her receiving the evaluation. In addition, respondent was inconsistent with attending her individual therapy sessions, she was not consistent with her medication, and she missed follow-up appointments with her mental health professionals. “While the DH[H]S has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). In this instance, DHHS made reasonable efforts to provide services to respondent, yet respondent did not fulfill her responsibility to consistently participate in the services that were offered. *Id.*

Finally, respondent argues that the trial court clearly erred in finding that termination was in the children’s best interests.

“Once a statutory ground for termination has been proven, the trial court must find that termination is in the child’s best interests before it can terminate parental rights.” *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012) citing MCL 712A.19b(5). When considering whether termination of parental rights is in the child’s best interests, the court may consider “the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *Id.* at 41-42 (citations omitted). “The trial court may also consider a parent’s history of domestic violence, the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, the children’s well-being while in care, and the possibility of adoption.” *In re White*, 303 Mich App 701, 714; 846 NW2d 61 (2014).

In this case, the court did not clearly err in finding that termination was in the children’s best interests. Here, over the course of the proceedings, respondent displayed an inability to acquire the necessary parenting skills and abilities to care for the two children. The record supports that respondent struggled with caring for the two children, lacked age-appropriate parenting techniques, and was not consistent with attending the visitations. In addition, the caseworker indicated at several of the review hearings that the children did not appear bonded with respondent. Furthermore, respondent struggled with mental health issues and, while she made progress with these issues, she was not able to sufficiently address the issues such that she would be able to care for the two children. Respondent was not consistent with her individual therapy, she stopped taking her medication, and she missed several follow-up appointments with her mental health professionals. In contrast, testimony showed that the children were thriving in

their foster homes, adoption was a possibility, and that the children needed permanency. In short, the court did not err in concluding that termination was in the children's best interests. *In re White*, 303 Mich App at 714.

Affirmed.

/s/ Michael F. Gadola  
/s/ Stephen L. Borrello  
/s/ Cynthia Diane Stephens